Filed 8/2/19 In re R.S. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Modoc)

In re R.S., a Person Coming Under the Juvenile Court Law.	
MODOC COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. S.H., Defendant and Appellant.	C087456 (Super. Ct. No. JP16007)

S.H., mother of the minor, R.S. (minor), appeals the juvenile court's order terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 395.)[1] Following the denial of her petition for extraordinary writ, mother also reasserts her contention the

[1] Undesignated statutory references are to the Welfare and Institutions Code.

juvenile court erred in terminating her reunification services and in denying her petition to change the court's order pursuant to section 388. We will affirm the juvenile court's orders.

FACTUAL AND PROCEDURAL BACKGROUND[2]

Trinity County

On September 14, 2016, the Trinity County Health and Human Services Department (Trinity County Department) filed a dependency petition regarding the then 10-year-old minor, R.S., and the minor's half-sibling, A.S. (who is not a party to this appeal). The petition alleged, pursuant to section 300, subdivision (b), that the minor's father, C.S., failed to meet the minor's basic needs and hygiene, failed to protect the minor from domestic violence, and failed to provide safe and stable housing. In that regard, it was alleged father moved the minor and her half-sibling on numerous occasions, often residing in father's car, in an effort to evade child welfare authorities. The petition further alleged, pursuant to section 300, subdivision (c), the minor exhibited serious age-inappropriate behaviors as a result of father's unwillingness or inability to parent the minor, forcing the minor to "take on the parental role" and placing her at risk of serious emotional damage. The minor was removed from father's custody and placed with her paternal grandmother.

The September 2016 jurisdiction report stated father had full physical custody of the minor and both parents shared legal custody. The minor revealed she had seen her parents smoking marijuana and she watched mother sprinkle methamphetamine on the marijuana so father " 'got high.' " She claimed mother hit father in the head with a bat

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[2] Portions of the factual and procedural summary are taken from the record in mother's writ petition proceeding (C085970) that was incorporated herein by reference pursuant to this court's October 29, 2018 order.

and then "father was arrested for being high." She reported father got into fights, had guns, and threatened to kill people, and drove with his eyes closed on occasion, requiring her to wake him up.

The minor felt safe with father as long as she could take care of her younger brother, A.S. She took care of A.S. because it was her "job," changing his diaper, disciplining him, preparing his meals, and monitoring his hygiene and sleep preferences. She often cooked dinner while father slept. She and her brother slept in father's car " 'a lot' " and moved from town to town often because father was running from CPS.

Although mother was a non-offending parent, the Trinity County Department had concerns about mother's ability to care for the minor due to father's ongoing substance abuse and the fact mother did not appear to be actively involved in the minor's life.

The juvenile court found true the allegations in the dependency petition regarding father and ordered twice-weekly supervised visits between mother and the minor.

According to the November 2016 disposition report, mother had not seen the minor in three to five months. The minor adamantly refused contact with mother.

The minor was referred to Alisha Romesha, a therapist at Modoc County Behavioral Health Services, who assessed the minor and concluded she was very parentified and became distressed when she was not allowed to behave in that role. Romesha opined visitation with mother was concerning given that the minor saw mother as competition and a person who had hurt father and the minor in the past. Romesha stated mother would need to participate in services including parenting, nurturing, and personal and conjoint therapy before any formal visitation with the minor could occur, and visitation should only occur in a therapeutic setting.

The Trinity County Department recommended the minor remain in the care of the paternal grandmother, reunification services be provided to mother, and the case be transferred to Modoc County where mother and the minor were both residing.

The juvenile court adjudged the minor a dependent of the court, and ordered her removed from father and placed with the paternal grandmother. The court found placement of the minor with mother, a non-custodial parent, would be detrimental to the minor, and ordered reunification services for mother pursuant to the recommended case plan. The court also ordered supervised visitation as determined by the therapist and in a therapeutic setting, and prohibited telephone and written contact with the minor as detrimental to the minor's best interests. The court granted the motion to transfer the case to Modoc County.

Modoc County

The Modoc County Juvenile Court accepted the transfer, appointed counsel for mother and the minor, and continued the matter for an interim review hearing.

The Modoc County Department of Social Services/Child Protective Services (Department) filed an interim review report on February 10, 2017, recommending continued reunification services for both parents and continued out-of-home placement of the minor with the paternal grandmother.

Social worker Donnetta Kinney met with mother on January 17, 2017. Mother stated she would " 'do what it takes to get my daughter back.' " Mother also stated she lived with the maternal grandmother, had a volunteer job at Sunrays of Hope, a wellness and recovery center, and maintained a steady income.

Kinney supervised a visit between mother and the minor at the Department's offices on January 30, 2017. The minor appeared to be uneasy with mother and unsure how to act, and had to be redirected when she began to belittle mother about mother's past.

On February 7, 2017, Kinney conducted a home visit at mother's residence and did not report any concerns. Kinney supervised another visit between mother and the minor and noted the visit had to be interrupted and the minor redirected several times

when the minor made inappropriate comments to mother such as, " 'You haven't even been there for me.' "

Kinney concluded that, if mother continued her communication with the Department and her active efforts for visitation with the minor, it was likely mother would reunify with the minor. Kinney noted mother was demonstrating her willingness to have the minor back in her home and had agreed to getting the minor her own space to live in a home free from clutter and harmful materials. It was also noted visitation would be essential to reestablish the relationship between mother and the minor.

At the February 14, 2017 interim review hearing, the court granted the Department's request to restore mother's rights to make educational and medical decisions for the minor. The minor requested to remain with the paternal grandmother and stated she did not want to live with mother but wanted to have visitation. The court continued placement with the paternal grandmother.

Six-Month Review

The May 2017 six-month review report recommended continuation of reunification services to both parents. Mother continued to live with the maternal grandmother and maintain steady employment. Mother reportedly provided random urine samples for drug testing when asked. She tested positive for THC, for which she provided a valid recommendation.

Mother provided documentation of her completion of her parenting class and other programs and was attending counseling regularly. She attended eight of ten supervised visits with the minor. The report noted visits were limited "due to the lack of a bond between [mother] and [the minor]." The minor frequently stated she did not want to visit with mother and appeared to not want to further develop a relationship with mother. The visitation supervisor intervened frequently to mitigate the arguing between mother and the minor. Therapist Romesha reported that at one of her meetings with the

minor, the minor stated that, if she had to live with mother, she would either kill herself or mother.

Social worker Kinney supervised a visit between mother and the minor on February 22, 2017, and had to intervene when the minor and mother continued to argue over medication the minor was taking. A few subsequent visits went well. However, intervention was again required during a March 29, 2017 visit due to arguing between mother and the minor.

On March 10, 2017, Kinney met with mother to discuss mother's case plan. Mother provided certificates for classes completed and stated she was in a better place than she was a year ago because she was no longer using drugs other than marijuana.

Kinney opined the minor was not ready to reunify with the parents and, while mother rarely missed a visit, it was evident her relationship with the minor was not at a point where the minor wanted to live with mother. The updated case plan instructed mother to continue general counseling, participate in substance abuse testing, and be "nurturing and supportive" during visits with the minor. The plan also stated Kinney would meet with mother in person on a monthly basis to ensure the case plan objectives were being met and to identify any other needs.

The May 22, 2017 addendum report stated mother completed her drug assessment on April 18, 2017 and the Department recommended she join a drug and alcohol group. However, she had yet to attend any recommended groups. Mother also had individual counseling every other week but had not seen the behavioral specialist since April 13, 2017, and did not show up for three scheduled appointments.

On May 17, 2017, Kinney met with the minor, who stated she did not want to visit or see mother anymore. When asked why, the minor stated without further explanation, " 'I never ever ever want to be around her and I don't want to be in her life and I don't want her in mine. I don't want to be around her.' "

At the May 22, 2017 six-month review hearing, the juvenile court directed mother to comply with the Department's requests for urine samples and requests to inspect her home. The court found the Department provided reasonable services, and further found mother's progress in services was adequate. The court continued mother's reunification services and ordered continued weekly supervised visitation between mother and the minor.

Twelve-Month Review

The 12-month review report filed September 25, 2017 recommended mother's services be terminated and the matter set for a section 366.26 hearing. The minor continued to see therapist Romesha twice a month for individual counseling and continued to take psychotropic medication.

Mother completed her parenting class and there were no concerns that she was using alcohol or drugs other than THC. She continued to visit the minor regularly, attending 10 of 15 visits. However, the minor persisted in voicing that she did not want to see her mother, stating she was tired of mother " 'bribing her' all the time" by bringing the minor things to make the minor like her, adding, " 'I am never going to like her.' " Mother and the minor argued during visits and the minor made it evident she did not want to participate.

On May 23, 2017, Kinney spoke with Romesha about conjoint counseling with mother and the minor "to see about strengthening their relationship." Romesha reported that the minor repeatedly stated she did not want to see mother and Romesha felt a forced interaction would be detrimental to the minor.

The Department recommended that visits be decreased to once per month due to the lack of bond between mother and the minor. It was noted that, "[t]hroughout the case and the visits [the minor] has not developed a bond with her mother and will often show

through body language and her words voiced to [the social worker] that she does not want to spend time with her mother."

During a meeting between the minor, therapist Romesha, and social worker Kinney, the minor stated, " 'I don't want to be around my drug addict for a mother.' " Kinney and Romesha agreed that continuing to push the minor to talk about things she did not want to talk about, including her mother, would inhibit progress in the minor's therapy sessions.

On several occasions in July 2017, Kinney attempted to contact mother regarding visitation with the minor. Mother either did not answer her telephone or did not answer the door when Kinney went to her house. When Kinney finally made contact, mother stated she had moved to a new home. Kinney conducted a home check and noted the house appeared to be clean and appropriate. However, mother stated a man named J.S. was living there. A criminal history showed J.S. was on felony parole but had provided clean urine tests and was gainfully employed. Mother also revealed there was another individual living in the home whose name she did not know but whose belongings cluttered a bedroom that smelled so badly of something rotting the door had to be kept closed. When asked when the individual would be leaving, mother replied, " 'hopefully soon.' "

The minor continued to express that she did not want to live with mother, stating she would like to live with the paternal grandmother and have the option of seeing mother if mother " 'changed.' "

The Department reported that, despite its efforts to work with service providers to build the bond between mother and the minor, there had been no change in the relationship between them and the quality of visits was limited as a result. The report noted mother continued to "engage herself with people that are involved with Law Enforcement" and continued to "live or let people live with her that she is not familiar

with." The Department concluded there was no substantial probability the minor would be returned to mother within the next six months.

The contested 12-month review hearing took place over several days beginning on September 25, 2017. Mother submitted letters regarding her employment at Sunrays of Hope and her completion of a parenting class. Mother also testified that visits with the minor were difficult at first, but improved over time. She explained she missed several visits due to illness, oversleeping, or losing her visitation schedule.

Mother stated she finished parenting classes and worked 25 to 30 hours per week at Sunrays of Hope. She attended a few counseling sessions but then "had no desire to go back." She had not sought out counseling since February 2017 despite the fact opportunities to do so were provided to her. She attended potlucks at AA a couple of times and completed her alcohol and other drug (AOD) assessment, but did not participate in any AOD services because none were recommended to her. She confirmed she was offered substance abuse services but had not taken advantage of those, stating, "Why would I need to take them?"

Mother testified she "never lied" to the minor, but admitted the minor might have trust issues with her due to incidents in the past. She felt the minor had anger issues toward her but agreed some of the minor's issues had to do with mother's life choices and lifestyles.

Mother was unsure whether it would be good for the minor to be returned to her custody. She thought it would be challenging for the minor. When asked whether she wanted the minor to live with her, mother said, "Yes and no," explaining she did not want to "be that kind of person" who tells their child what to do and expects compliance; instead, she wanted to "be her mom." She did not think placement with the paternal grandmother would be good for the minor, but was unsure whether return of the minor to her would be better. She did not want to take the chance of having the minor returned to

her if it would be psychologically or emotionally damaging to the minor. Acknowledging the minor's wishes not to live with her, mother testified she would not force the minor to live with her but stated she did not believe the minor was old enough to make that decision. Mother stated that, if the minor were returned to her, mother would go to counseling with the minor, be involved in her schooling, and supervise her "[a]ll the time" at home.

The paternal grandmother testified she had been the minor's caregiver since September 2016, and that the minor's behavior was difficult at first, but had improved. The minor followed the rules at the paternal grandmother's house and told the paternal grandmother she loved her.

The paternal grandmother expressed concern when she learned mother would begin visits with the minor because the paternal grandmother believed mother was "a drug user," noting she knew mother used illegal drugs several years prior but was not aware of any current use. She testified that, following visits with mother, the minor shut down and did not want to talk about the visits. The minor's behaviors had improved over the past year and the minor had stabilized in terms of her security and well-being. While the minor used to substitute herself in as a mother figure to her younger brother, she was not doing that as often now.

Various Department staff members testified regarding supervised visits between mother and the minor. During some of the visits, the minor had a poor attitude toward mother, was argumentative, and was disinterested in receiving a hug from mother. During other visits, the two either did not engage or engaged only superficially. The minor repeatedly said she did not want to visit with mother and, on one occasion, ran away from the supervising social worker to avoid the visit altogether.

Kinney testified that mother complied with all the services she was asked to do and made significant positive changes in her life. However, she noted the minor's

attitudes toward mother had not changed since Kinney's involvement in the case and would not change in the future. She testified the minor's attitudes toward mother existed for a number of years and had been formulated well before the dependency case arose. The minor had explained to Kinney that her feelings toward mother were based on mother's actions towards the minor and father, and on the lack of communication and bond between mother and the minor for the last several years. The minor disliked mother because mother spanked her and slapped her too hard, hit the father, and failed to show up for visits. The minor felt abandoned by mother at an early age and did not trust her emotionally, and felt mother was more concerned about mother's own interests. She questioned mother's judgment and sometimes disapproved of her relationship choices. She also remembered mother's drug addiction and harbored a lot of resentment toward mother.

Kinney testified it would not be in the minor's best interest to be returned to mother's custody and felt it would be harmful. Kinney stated visits had been going better recently with less intervention needed. However, she did not believe returning minor to mother would help bring about reconciliation. She explained that "positive" visits meant both parties appeared to be enjoying themselves or interacted positively with each other. She noted that, over the past six months, there had been just five positive visits. She encouraged the minor to keep an open mind about mother, something the minor was improving on. She noted that a bond between the parent and the child is ideal for reunification and without it, reunification is hindered.

Kinney testified there had not been an increase in visits due to the minor's reluctance and the intervention required to mitigate arguments between mother and the minor. She also had concerns about mother's interactions with people with lengthy criminal histories and the fact she allowed random people to live in her home. When Kinney discussed her concerns, mother explained she was living in her mother's house

and it was her mother who allowed those people to stay in the home. Kinney testified that the fact mother could not identify who was living in the house presented safety concerns if the minor were to live there.

Kinney did not believe there were any services that could be offered to mother in the next six months that had not already been offered to her to repair her relationship with the minor. She acknowledged that, within the past month, mother had maintained a stable environment in her own residence with no strangers living in the house; however, she opined that one month was not enough time to recommend return of the minor, adding it would take at least several months of consistent visitation, strengthening of the bond between mother and the minor, and no Departmental intervention.

Therapist Romesha testified she was asked to observe the relationship between mother and the minor in a therapeutic setting and provide feedback. She saw the minor every other week beginning in January 2017, but she never met with the minor and mother together. Romesha stated it was immediately apparent the minor was resistant to living with mother and noted the minor maintained that position throughout the proceedings.

Romesha was asked whether co-counseling would be appropriate. Romesha testified she spoke with her supervisor and together they agreed not to "push" the minor to talk about her mother in therapy or conduct co-counseling because it was clear the minor was opposed to it. Romesha opined that it would be harmful to force the minor into co-counseling with mother because the minor is "a very bright young lady, and she knows how she feels. I think we need to respect that." She had not noticed any significant changes in the minor's attitudes and feelings towards mother in the past six months.

Romesha testified she did not believe there were services that could be offered to mother to change the minor's mind or change the minor's relationship with mother. She

noted that, if the minor were pushed to participate in more therapy with mother or reunify with mother, it would present a risk of long-lasting emotional and psychological harm to the minor and could potentially have a negative impact on the minor's schooling, her self-esteem, her sleeping and eating, and her ability to establish and maintain close and trusting relationships. She had no concerns that the minor might feel abandoned in the event the mother could not reunify.

Social worker supervisor Tom Sandage testified he was Kinney's direct supervisor and was involved in staffing the dependency case. Sandage testified that, while mother made substantial progress in services, the Department also assessed potential reunification by a parent's prior risk, prior life behavior, and visitation. He stated the visits between mother and the minor had not been increased because "they couldn't [consistently] get through a visit without a social worker or social worker aide intervening." Acknowledging that the majority of interventions were the result of the minor's behavior, Sandage noted there were times when intervention was necessary to redirect mother to a line of questioning that would not agitate the minor.

When asked why no therapeutic supervised visitation had been offered, Sandage testified the Department followed Romesha's recommendation against co-counseling because the minor was not ready.

Explaining the basis for the Department's recommendation of termination of services for mother, Sandage stated, "The relationship between [mother] and [the minor] is very fragile, borderline detrimental to some degree," adding the Department could not guarantee the minor's personal safety should it slowly back away from supervision and allow mother increased access to the minor. He opined that it came down to the minor's personal safety and stated he was not in favor of giving mother an additional six months of services because he did not believe the relationship between mother and the minor could be repaired in six months. While he acknowledged

his concerns were speculative, he stated his speculation was based on his training, experience, and education.

On October 11, 2017, at the conclusion of the contested hearing, the court found mother substantially complied with the case plan and made substantial progress toward alleviating or mitigating the causes necessitating removal of the minor, but it would nonetheless be detrimental to return the minor to mother based on "mental health professional[s] telling me that it will be detrimental to return the child at this time, given the child's attitudes, regardless of why she feels that way."

Based on the Department's 12-month review report, the case plan dated September 13, 2017, the testimony of the witnesses at the hearing, and all other evidence received, the court found the Department provided reasonable services to mother, mother's progress was substantial, the minor's out-of-home placement was necessary and appropriate, and return of the minor to mother would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The court terminated mother's reunification services and set the matter for a section 366.26 hearing.

Writ Petition

On October 16, 2017, mother timely filed a notice of intent to file a writ petition. Mother filed a petition for extraordinary writ on March 8, 2018, challenging the juvenile court's findings at the 12-month review hearing that reasonable services were provided by the Department, and further challenging the court's finding of detriment pursuant to section 366.21, subdivision (f), and its termination of her reunification services. (Cal.

Rules of Court, rule 8.452.)[3] On April 5, 2018, mother's writ petition was denied on the merits by this court.

Section 388 Petition

On January 19, 2018, mother filed a section 388 petition seeking to change the court's October 11, 2017 order terminating her reunification services and either return the minor to her or continue her services. The petition alleged the changed circumstances as follows: "Mother has visited 1 time pursuant to the reduced visitation order, and the visit went well. Mother has again completed parenting classes, she has been promoted in her volunteer position with Sunrays of Hope, and she has maintained her home with her significant other, who remains employed as well. She remains stable and ready to care for her daughter." The petition argued the requested order would be better for the minor because "[the minor] deserves to be raised by her parent," who was a nonoffending, noncustodial parent who had done everything asked of her and stands ready, able, and willing to parent the minor.

The juvenile court heard mother's petition on January 29, 2018, issued a tentative denial without prejudice pending this court's decision on mother's writ petition, and continued the matter to April 9, 2018. Mother's counsel requested a bonding study to "help the Court address the unique issues or dynamics that are involved" in the relationship between the minor and mother and "ultimately decide whether or not there's a beneficial relationship . . . that would be an exception to adoption." The court initially deferred its decision on the bonding study, but then denied the request "at this time."

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3 Undesignated rule references are to the California Rules of Court.

At the April 9, 2018 review hearing, the court indicated it had received notice of this court's denial of mother's writ petition and, based thereon, confirmed its denial without prejudice of mother's section 388 petition.

Section 366.26 Reports

The section 366.26 report filed January 24, 2018 recommended termination of mother's parental rights and selection of a permanent plan of adoption of the minor by the paternal grandmother. Father reportedly relinquished his parental rights.

According to the report, mother visited the minor consistently, but the quality of the visits was mixed due to the minor's challenging behavior and arguments between mother and the minor. The minor maintained her desire not to visit with mother. Social worker Kinney noted that, during the pendency of the case, the minor "has not had a strong bond with [mother] and is reluctant to spend any length of time with her," and made clear she did not want to live with mother. Kinney concluded mother's parental rights should be terminated, as the minor's relationship with mother "will take a substantial amount of time to repair, if it is able to be, and placing her back with her mother would be a detriment."

Adoptions specialist Laura Kenney assessed the minor and prepared an assessment report concluding the minor was likely to be adopted and recommending termination of mother's parental rights and identification of adoption as the permanent plan.

The addendum report filed on March 29, 2018, reiterated the Department's previous recommendations, noted mother's writ petition had been filed, and stated the minor told the social worker she did not want to see mother.

On March 27, 2018, the minor told Kinney she wanted to increase her visits with mother to twice a month, stating things were getting better, she did not want to leave mother " 'high and dry,' " and she wanted to leave on good terms when she moved with the paternal grandmother to Missouri. Kinney noted that the quality of the visits

appeared to be better, but concluded it was "clear during the life of the case that [the minor's] relationship with her mother will take a substantial amount of time to repair, and placing her back with her mother would be a detriment." Kinney recommended termination of mother's parental rights.

The second addendum report filed June 1, 2018, reiterated the Department's prior recommendations, and added a recommendation that the court authorize the paternal grandmother's relocation to Missouri with the minor.

Mother missed a visit due to writing down the wrong date, causing the minor to be sad and disappointed. Mother requested another visit, but the minor was not interested, stating, she " 'really didn't care either way because she [mother] probably wouldn't show up anyways.' "

The addendum report stated there had been no change in the minor's behavior regarding her desire not to live with mother or spend any time with mother, and the minor still showed outward sadness and disappointment at mother's failure to show up at a scheduled visit.

Section 388 Petition

On April 17, 2018, mother filed a renewed section 388 petition that was identical to the previous petition with the exception of an additional allegation of changed circumstance--that the minor "has requested more time with her mother." The petition again requested that the court return the minor to mother or continue mother's reunification services, and alleged the requested change would be in the minor's best interests because the minor "deserves to be raised by her parent," a "nonoffending noncustodial parent" who had "done everything asked of her to reunify, and stands ready, able and willing to parent her daughter."

Section 366.26 Hearing

The contested hearing on section 366.26 and mother's renewed section 388 petition commenced on June 7, 2018. The court noted the evidence presented would be considered for purposes of both the section 388 petition and the section 366.26 hearing. The parties received mother's documentation into evidence, including certificates of completion.

The minor, who testified in chambers, stated she hated mother and wished mother would "jump off a cliff." The minor said she would only have more visits with mother because the minor did not want to "leave [mother] hanging." However, she denied having fun during visits and stated mother only brought her presents to buy her affection. The minor called mother "an idiot," said she did not love mother, and stated she did not intend to visit mother once she moved to Missouri with the paternal grandmother. She testified she knew an adoption would sever her relationship with mother, adding, "Yeah, and I like it."

Adoption worker Kenney testified regarding her preparation of the adoption assessment report, stating she interviewed the minor several times and the minor stated she wanted to be raised by her paternal grandmother. Kenney explained to the minor in detail the difference between adoption and guardianship, and discussed how the dependency court worked. She noted the minor had a lot of anger and hostility toward mother. With regard to the beneficial parental relationship exception to adoption, Kenney stated the minor would need some therapy to address her anger toward mother.

Mother testified the minor had been hostile toward her since the age of seven, about a year after she was removed. Mother stated she had a stable home environment and a bedroom for the minor. She was in a long-term relationship with J.S. and had recently been promoted to a more responsible position at her volunteer job. She provided

documentation of her participation in and completion of courses from 2015 to 2017, but had no new certificates since the filing of her renewed section 388 petition. Mother could not explain or present any evidence to demonstrate any change in circumstances to support her request for continued reunification services. She was also unable to describe why it would be in the minor's best interest for the court to provide mother with continued services other than to say, "Because every kid needs their parent."

The paternal grandmother testified that she planned to move with the minor and the minor's sibling to Missouri. She preferred adoption over guardianship, but felt it was important for the minor to have a continuing relationship with mother regardless of the paternal grandmother's feelings toward mother. She encouraged the minor all the time by telling the minor, " 'She is your mom. You may not like things that she does, but she is your mom.' " The paternal grandmother stated that when the minor said mother was "a drug dealer," mother "does drugs," and she hates mother, the paternal grandmother told the minor, " 'You don't hate your mom. You don't hate anybody. That's a – that's not a good word. You can dislike what people do, but you don't ever want to hate anybody.' "

At the close of testimony, mother's counsel argued mother's section 388 petition should be granted and the beneficial parental relationship exception to adoption applied. Counsel argued further that there was a "total lack of real assessment" of the relationship between mother and the minor, and that such an assessment was imperative to resolve the conflict between the minor's willingness to visit mother and at times ask for more contact and the minor's negative statements and feelings about mother.

The minor's counsel argued that, while mother "made a lot of effort" in the case, reconciliation was not in the minor's best interests and "would just be simply disastrous for [the minor]." Counsel argued the minor needed the finality and stability of adoption by the paternal grandmother that would also preserve the bond between the minor and her

sibling. The Department argued that, with the exception of providing evidence of somewhat regular visitation with the minor, mother had not demonstrated the beneficial parental relationship exception applied.

The court commended mother on her participation in services, but denied mother's renewed section 388 petition as not in the minor's best interest, finding, "the relative bonds between the children, the dependent child, and the parents, and the caretakers . . . militates in favor of denying the [section] 388 [petition] at this point."

The court concluded the beneficial parental relationship exception did not apply, finding the permanency, finality, and stability an adoption could provide outweighed any continuing beneficial relationship between mother and the minor. The court terminated mother's parental rights, selected adoption as the permanent plan, and authorized the paternal grandmother to move to Missouri with the minor.

Mother filed a notice of appeal of the court's October 11, 2017 orders after the 12-month review hearing, the court's June 7, 2018 order denying her renewed section 388 petition, and the court's June 7, 2018 order terminating her parental rights and selecting adoption as the permanent plan.

DISCUSSION

I

Claims Cognizable on Appeal

Mother first asserts she may raise issues arising from the 12-month review hearing because she filed a petition for extraordinary writ pursuant to rule 8.452 that was denied summarily on the merits. (*Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501 (*Joyce G.*).) We agree, with one exception.

"Subsequent appellate review of findings subsumed in an order setting a section 366.26 hearing is dependent upon an antecedent petition for writ review of those findings having been 'summarily denied . . . .' " (*Joyce G., supra*, 38 Cal.App.4th at p. 1513;

§ 366.26, subd. (*l*).) Mother's writ petition raised issues regarding the reasonableness of the services provided, whether the juvenile court's decision to deny further services was supported by the evidence, and whether the court's finding of detriment under section 366.21, subdivision (f), was supported by the evidence. The petition was summarily denied on the merits. When "the denial is summary, the petitioner retains his or her appellate remedy (§ 366.26, subd. (*l*)(1)(C)) *but is limited to the same issue on the same record* (§ 366.26, subd. (*l*)(1)(B)) and thus is destined on appeal to receive the same result." (*Joyce G., supra*, at p. 1514, italics added.)

Mother also claims the court's oral findings at the 12-month review hearing were vague and did not meet the statutory standard to "specify the factual basis for its conclusion that the return would be detrimental." (§ 366.21, subd. (f)(2).) The issue was not raised in mother's writ petition. Thus, she is precluded from raising it in this subsequent appeal. (*Joyce G., supra*, 38 Cal.App.4th at p. 1514.)

With respect to the remaining contentions, we affirm the juvenile court's orders.

II

Substantial Evidence of Risk of Detriment at the 12-month Review Hearing

Mother contends the juvenile court's finding at the 12-month review hearing that return of the minor would create a substantial risk of detriment to the minor's safety, protection, or physical or emotional well-being within the meaning of section 366.21, subdivision (f), was not supported by substantial evidence. We conclude substantial evidence supports the juvenile court's finding.

The permanency hearing "shall be held no later than 12 months after the date the child entered foster care." (§ 366.21, subd. (f)(1).) "After considering the relevant and admissible evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a

substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment." (*Ibid*.)

"In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent . . . and the extent to which he or she availed himself or herself of services provided, . . . and shall make appropriate findings pursuant to subdivision (a) of Section 366." (§ 366.22, subd. (a)(1).)

"[W]hile the court must consider the extent the parent has cooperated with the services provided and the efforts the parent has made to correct the problems which gave rise to the dependency (§ 366.22, subd. (a)), the decision whether to return the child to parental custody depends on the effect that action would have on the physical or emotional well-being of the child. [Citation.]" (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.) "While the statutory scheme is designed to assist families to 'correct the problems which caused the child to be made a dependent child of the court' (§ 366.1, subd. (d); Stats. 1987, ch. 1485, § 41, p. 5628), its focus remains on the well-being of the child. [Citations.]" (*In re Joseph B., supra*, at p. 900.)

"A detriment evaluation requires that the court weigh all relevant factors to determine if the child will suffer net harm." (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1425; cf. *In re Cody W.* (1994) 31 Cal.App.4th 221, 227.)

"In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass judgment on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in

the light most favorable to the juvenile court's order, and affirm the order even if there is other evidence that would support a contrary finding. [Citation.] . . . The appellant has the burden of showing that *there is no evidence* of a sufficiently substantial nature to support the order. [Citations.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 915-916, italics added.) We conclude there was sufficient evidence in the record to support the court's detriment finding.

Mother claims the evidence showed she was the non-offending, non-custodial parent who had substantially complied with her case plan, was stable, clean and sober, had social supports, and had a safe home and a full-time volunteer job. She argues there was nothing about her "current situation" that would pose a risk of harm to the minor.

The minor's therapist, Romesha, testified that forced reunification with mother would present a risk of long-lasting emotional and psychological harm to the minor and could potentially have a negative impact on the minor's schooling, her self-esteem, her sleeping and eating, and her ability to establish and maintain close and trusting relationships.

Social worker Kinney testified that, while mother participated in services, there were several reasons it was not in the minor's best interest, and indeed would be harmful, to return the minor to mother. First, Kinney noted mother had only maintained a stable environment with no strangers living in the house for one month. In order to make a recommendation to return the minor to mother, she would need to see several months of consistent visitation, a strengthening of her bond with the minor, and no Departmental intervention during visits.

Next, the minor disliked mother. The minor told Kinney this was because of mother's past behaviors, including spanking the minor, hitting the father, failing to show up for visits, abandoning the minor, focusing on mother's own interests rather than the

interests of the minor, failing to communicate and bond with the minor, and making bad relationship decisions. The minor also harbored significant resentment toward mother for mother's past drug addiction, and she maintained her belief that mother might currently be using drugs despite the fact there was no evidence of such current use presented at the 12-month review hearing. The minor threatened to run away, repeatedly stated she did not want to live with mother, and threatened one time that, if she had to go live with mother, she would either kill herself or mother. Indeed, mother testified it would be challenging for the minor to be returned to her because the minor might rebel. Mother was unsure whether return of the minor to her was appropriate and testified she did not want to take the chance of having the minor returned to her if it would be psychologically or emotionally damaging to the minor.

Finally, Kinney expressed concern that mother was associating with people with lengthy criminal histories and was allowing random people whom she could not identify by name to live in her home, all of which posed safety concerns if the minor were to be returned to mother.

Mother argues the concerns about her housemates was an improper basis for finding detriment because there was no evidence she was currently living with the people in question nor was there any evidence those people would cause any risk of harm to the minor. She also argues the Department learned that her current live-in boyfriend, J.S., posed no risk to the minor.

The record reveals that, on May 16, 2017, just months before the 12-month review hearing, social worker Kinney learned about a homicide near mother's home involving a suspect who was living in mother's garage (which had been converted into a room). Mother later confirmed the suspect had indeed been living in her garage but was "currently on the run." Mother also confirmed the suspect's belongings remained in the room.

Four months later, Kinney learned mother had moved to a new home and was living with J.S., who was on felony parole. While subsequent information confirmed J.S. was not a threat, Kinney also learned there was another individual living in one of the bedrooms that smelled so badly of something rotting that the door had to remain closed. Mother did not know that individual's name and could not provide any additional information about him other than that he would be leaving "hopefully soon."

Despite mother's attempts to minimize these facts, it was reasonable to conclude these circumstances created the potential for risk of harm to the minor had she been placed with mother.

Mother argues her association with the individuals in question cannot now be used as a basis for a detriment finding because she was never told to move out of her home or to end her association with any individual. She cites *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 774 (*David B.*) as support for her claim. To the extent this observation, made in passing, is intended to constitute an argument, it must be deemed forfeited. (Rule 8.204(a)(1)(B) [each point in appellate brief must be supported by citation of authority]; *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [lack of authority or analysis constitutes forfeiture].)

Mother asserts the minor's desire not to live with her or the lack of a bond between her and the minor is, in and of itself, not a basis for a finding of detriment. (*In re John M.* (2006) 141 Cal.App.4th 1564, 1571; *In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1262, 1265.) [While a child is entitled to have her or his wishes considered, "a child's preference is not the deciding factor in a placement decision, even when that child is a teenager"].) As previously discussed, the detriment finding was not based only on the minor's desire not to live with mother but rather on the serious emotional harm she would suffer if required to do so, as evidenced by the fact she was steadfast and plaintive

in communicating her wishes, she often became distressed when the issue was discussed, and she threatened to run away or even kill herself or mother.

On this record, we conclude substantial evidence supports the juvenile court's finding of detriment.

III

Sufficient Evidence of Reasonable Services to Mother

Mother contends the juvenile court erred in terminating her reunification services because (1) there was insufficient evidence to support the court's finding that she received reasonable services, and (2) mother demonstrated she made substantial progress in services and there was a substantial probability she and the minor would reunify if services were extended to 18 months.

Reunification services can be extended for up to 18 months from the date of initial removal if it is shown there is a substantial probability the minor will be returned and safely maintained in the home during that time or that reasonable services were not provided. (§§ 361.5, subd. (a)(3), 366.21, subd. (g)(1).)

"Reunification services must be 'designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.' (§ 362, subd. (c).) Accordingly, a reunification plan must be appropriately based on the particular family's 'unique facts.' [Citation.] . . . Visitation is a critical component, probably the most critical component, of a reunification plan. [Citations.]' " (*In re T.G.* (2010) 188 Cal.App.4th 687, 696-697.)

"[The Department] 'must make a good faith effort to develop and implement a family reunification plan. [Citation.] "[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where

compliance proved difficult . . . ." [Citation.]' [Citation.] 'The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.' [Citation.] 'The applicable standard of review is sufficiency of the evidence. [Citation.]' [Citation.]" (*In re T.G.*, *supra*, 188 Cal.App.4th at p. 697.)

A.

Reasonable Services Provided

Here, there is substantial evidence the Department provided reasonable services to mother. The minor was initially detained in Trinity County on September 16, 2016. On December 1, 2016, the Trinity County juvenile court ordered reunification services for mother pursuant to the recommended case plan that included programs on domestic violence, anger management, and parenting, all issues involved in the problems leading to the loss of custody. The court ordered supervised visitation as determined by the therapist and in a therapeutic setting, and prohibited telephonic and written contact with the minor as detrimental to the minor's best interests. Services continued after the matter was transferred to Modoc County on December 1, 2016.

An updated case plan attached to the May 2017 status review report instructed mother to continue general counseling, participate in substance abuse testing, and be "nurturing and supportive" during visits with the minor. The plan also stated the social worker would meet with mother in person on a monthly basis to ensure the case plan objectives were being met and to identify any other needs. The Department recommended that mother join a drug and alcohol group after completing her April 2017 drug assessment. She was also referred to individual counseling.

Mother contends the Department failed to provide: (1) conjoint therapy, (2) increased visitation, and (3) "correct information to [the minor] to address her

misperceptions about mother." We conclude the juvenile court's finding of reasonable services is supported by substantial evidence.

1. Conjoint Therapy

Shortly after removal in 2016, therapist Romesha assessed the minor, who was adamant that she did not want to see mother. At that time, Romesha determined visitation between the minor and mother should not occur until mother participated in services including parenting, nurturing, personal therapy, and conjoint therapy. Romesha felt forcing the minor to interact with mother would be detrimental to the minor. After meeting with the minor, Romesha and the social worker agreed that continuing to push the minor to talk about things she did not want to talk about, including her mother, would inhibit progress in the minor's therapy sessions.

Romesha testified at the 12-month review hearing that she continued to feel it would be harmful to force the minor to participate in conjoint counseling with mother because the minor was "very bright" and felt strongly about her mother and it was important to "respect that." She testified that, if the minor were pushed to participate in more therapy with mother, it would present a risk of long-lasting emotional and psychological harm to the minor and could potentially have a negative impact on the minor's schooling, her self-esteem, her sleeping and eating, and her ability to establish and maintain close and trusting relationships. Romesha also testified the minor's attitude and feelings toward mother had not changed in the past six months and there were no services other than those currently being offered to mother that would change the minor's relationship with mother.

Social workers Kinney and Sandage agreed there were no services other than those already being offered to mother that would repair mother's relationship with the minor if given six additional months. Sandage added that the Department looked to behavioral health specialists to, in part, determine what was in the minor's best interest, and the

Department followed Romesha's recommendation that conjoint counseling was not in the minor's best interest.

Mother argues the Department was "obligated to find someone else" to provide conjoint therapy when the minor's therapist determined conjoint therapy was not appropriate for the minor. The claim, made in passing and without citation to authority, is deemed forfeited. (Rule 8.204(a)(1)(B); *Atchley v. City of Fresno, supra,* 151 Cal.App.3d at p. 647.) In any event, contrary to mother's claim, the record demonstrates conjoint therapy would neither have fixed mother's relationship with the minor nor allowed the minor to return to mother's care and custody and instead, according to the social workers, therapist, and those professionals working closely with the minor, might actually have been detrimental to the minor and her relationship with mother.

2. Visitation

Mother claims increased (i.e., more frequent and unsupervised) visitation should have been provided to facilitate reunification. We disagree.

The minor's therapist determined early on in the proceedings that visitation was concerning given the minor did not see mother as her mother but rather as competition and a person who had hurt the minor and father in the past. The therapist opined that visitation should only occur in a therapeutic setting.

Supervised visits began on January 30, 2017. It immediately became apparent that the minor was uncomfortable with mother. Thereafter, with few exceptions, visits were difficult due to the minor's repeated desire not to visit mother and the need for intervention by the visitation supervisor to mitigate arguing between mother and the minor. On occasion, the minor stated she did not want to see mother at all.

As of September 2017, the Department recommended that visits be *decreased* due to the lack of bond between mother and the minor, as evidenced by the minor's continued objection to spending time with mother. The Department reported the quality of visits

between mother and the minor was "limited" due to lack of a bond. Department staff testified that, during some visits, the minor was rude, had a poor attitude toward mother, was argumentative, and was disinterested in mother's affection, and repeatedly stated she did not want to visit mother. The paternal grandmother testified that, following visits with mother, the minor shut down and refused to talk.

It was reported that, out of the 15 visits during the 6 months prior to the 12-month review hearing, only 5 visits had been positive. Social workers Kinney and Sandage both testified that there had been no increase in visits due to the minor's reluctance and the fact intervention was required to mitigate arguing between mother and the minor.

3. *Minor's Perception of Mother*

Mother claims services were unreasonable because the Department failed to challenge the minor's "mistaken beliefs" about mother or "address her misperceptions about mother." Because it is not clear what "service" mother feels she should have been provided, and she provides no authority to support her claim, we need not address her claim. However, we note the social workers and therapist redirected or corrected the minor when the minor expressed her belief that mother was currently using drugs or was bribing her with gifts, and the paternal grandmother dissuaded the minor from saying she hated mother and mother was "a drug dealer" and mother "does drugs."

B.

Mother's Progress in Services

Next, mother contends she regularly participated in services and made substantial progress, and the juvenile court should have found there was a substantial probability of the minor's return home and ordered an additional six months of services. She claims she met all of the requirements of section 366.21, subdivision (g)(3), which provides in part that, in order for the court to find a substantial probability that the child will be returned to the physical custody of her parent and safely maintained in the home within the

extended period of time, "the court shall find all of the following: [¶] (A) The parent . . . has consistently and regularly contacted and visited with the child . . . ; [¶] (B) The parent . . . has made significant progress in resolving the problems that led to the child's removal from the home; [and] (C) The parent . . . has demonstrated the capacity or ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs."

While there appears to be no dispute that mother eventually participated in most of the services provided, it is questionable whether, given the minor's repeated expressions of not wanting to visit or live with mother, she demonstrated she could provide for the minor's safety, protection, and physical and emotional well-being if the minor were returned to mother. In any event, even assuming mother met all of the requirements of section 366.21, subdivision (g)(3), mother's progress is not dispositive of whether the minor was likely to be returned home. "[W]hile the court must consider the extent the parent has cooperated with the services provided and the efforts the parent has made to correct the problems which gave rise to the dependency (§ 366.22, subd. (a)), the decision whether to return the child to parental custody depends on the effect that action would have on the physical or emotional well-being of the child. [Citation.]" (*In re Joseph B., supra,* 42 Cal.App.4th at p. 899.) The focus remains on the well-being of the minor. (*Id.* at p. 900.)

As previously discussed, there were other factors that militated against returning the minor to mother or providing mother with six additional months of services. In particular, social worker Kinney and therapist Romesha all testified they did not believe there were any services that could be offered to mother in the next six months that had not already been offered to her to repair her relationship with the minor. Social worker Sandage testified that the Department could not guarantee the minor's personal safety should it slowly back away from supervision and allow mother increased access to the

minor. He opined it came down to the minor's personal safety and stated he was not in favor of giving mother an additional six months of services because he did not believe the relationship between mother and the minor could be repaired in six months.

Mother argues the juvenile court failed to make an express finding regarding a substantial probability of return of minor to mother. However, mother made no such objection at the time of the court's ruling, thus forfeiting the argument here on appeal. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222.) In any event, based on the juvenile court's findings and orders on the record, we can infer the court determined there was not a substantial probability of returning the minor to mother's custody if an additional six months of services were provided.

In sum, we conclude the juvenile court did not err in terminating mother's reunification services.

IV

Denial of Mother's Section 388 Petition

Mother contends the juvenile court abused its discretion when it denied her section 388 petition to change the court's order terminating reunification services because it impermissibly based its ruling on the outcome of mother's petition for extraordinary writ. We conclude there was no abuse of discretion.

"To prevail on a section 388 petition, the moving party must establish that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. [Citation.]" (*In re J.T.* (2014) 228 Cal.App.4th 953, 965.) The change of circumstances or new evidence "must be of such significant nature that it requires a setting aside or modification of the challenged prior order." (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485; see also *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1451.)

When reunification services have been terminated and a section 366.26 hearing has already been set, a court assessing the child's best interests must recognize that the focus of the case has shifted from the parents' interest in the care, custody, and companionship of the child to the needs of the child for permanency and stability. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) The child's best interests "are not to further delay permanency and stability in favor of rewarding" the parent for his or her "hard work and efforts to reunify." (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.)

"A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

The petitioner has the burden of proof on both points by a preponderance of the evidence. (Rule 5.570(h)(1)(D).) In assessing the petition, the court may consider the entire history of the case. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) We review for abuse of discretion a juvenile court's denial of a section 388 petition. (*In re J.T., supra,* 228 Cal.App.4th at p. 965.)

We conclude the juvenile court did not abuse its discretion in denying mother's section 388 petition. Here, mother filed her first petition seeking to change the court's October 11, 2017 order terminating her reunification services on January 19, 2018. She argued she visited the minor, completed parenting classes, was promoted in her volunteer job, maintained her home with her significant other, and remained stable and ready to care for the minor. The court denied mother's petition without prejudice.

Mother filed a renewed section 388 petition on April 17, 2018 that differed from the original petition only in that it contained an additional changed circumstance alleging the minor had requested more time with mother.

While it is true the minor momentarily requested increased visits with mother in March 2018, prior to the minor's move to Missouri, the desire for more time was short-lived. The following month, the minor, who was reportedly sad and disappointed after mother missed a scheduled visit, stated she hated mother and thought mother "was high" during a visit. At the hearing on mother's section 388 petition, the minor testified in chambers that she hated mother and would only visit with her so as not to "leave [mother] hanging." The minor also stated she did not intend to visit mother once she moved to Missouri with the paternal grandmother.

Mother concedes some of the changed circumstances alleged in her renewed petition--such as completing parenting classes, maintaining a home with her significant other who was employed, and being stable and ready to parent the minor--were "ongoing rather than new." She argues, however, that she met the first prong of section 388 by alleging circumstances that were truly new--such as the fact that her first visit with the minor following a reduction in the visitation schedule went well, she was promoted to treasurer at her volunteer job with Sunrays of Hope, subsequent visits with the minor "have gone well," and the minor "has requested more time with her mother"-- that demonstrate the bond between mother and the minor was improving. She further argues she met the second prong of section 388 by alleging that the minor "deserves to be raised by her parent," a noncustodial, nonoffending parent who did everything asked of her to reunify. We disagree.

As for the first prong of section 388, mother did not allege any new or different facts not previously before the court when it terminated her reunification services. At the time the court issued its October 11, 2017 order terminating mother's reunification services, mother was participating in parenting classes, working at Sunrays of Hope, and visiting the minor somewhat regularly. The fact that some of mother's visits with the minor went well was testified to by mother, Department staff who supervised visits, and

social worker Kinney. Mother's focus on subsequent visits (on February 21, February 28, and March 15, 2018) to demonstrate improvement in her relationship with the minor ignores the fact that, while some of those visits reportedly "went well" and the minor stated she enjoyed a visit, there was little change from the prior visits in that mother and the minor continued to argue with each other, requiring staff intervention. Mother's focus on the fact that, after a March 27, 2018 visit, the minor requested one additional visit per month before the minor left for Missouri also ignores the fact the minor withdrew that request just two weeks later. At best, mother's petition showed the circumstances were changing, which is insufficient to support a modification of the October 11, 2017 order pursuant to section 388. (*In re Casey D., supra,* 70 Cal.App.4th at p. 47.)

Having concluded mother's petition did not satisfy the first prong of section 388, we need not address whether the petition met the second prong, as both are required in order to prevail on a section 388 petition. (*In re J.T., supra,* 228 Cal.App.4th at p. 965.)

Finally, mother argues the juvenile court improperly relied on this court's decision on mother's writ petition as the basis for its denial of mother's section 388 petition. We disagree.

The juvenile court issued a tentative denial of mother's original section 388 petition without prejudice pending our decision on mother's writ petition. At the June 7, 2018 hearing, the court stated it had read and considered mother's renewed section 388 petition and supporting documentation. Thereafter, the court received mother's documentation into evidence pursuant to the parties' stipulation, heard testimony from a number of witnesses including mother and the minor, and considered argument from mother's counsel regarding purported new evidence of changed circumstances to support the section 388 petition. The court denied mother's petition, concluding that, while

"there does appear to have been some indication of a change in attitude with regard to [the minor] and mother . . . as far as visitation," it was not in the minor's best interest to "reopen[] reunification or plac[e] [the minor] with mother at this time."

While the juvenile court tentatively denied mother's original section 388 petition without prejudice as it awaited this court's decision on mother's writ petition, the juvenile court's denial of mother's renewed section 388 petition was based on the evidence, testimony, and argument presented at the June 7, 2018 hearing.

In sum, the juvenile court did not abuse its discretion in denying mother's section 388 petition.

V

Termination of Parental Rights

Mother contends the juvenile court violated her right to due process to put on evidence to prove the beneficial parental relationship exception to adoption when it denied her request for a bonding study. We disagree.

At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must choose one of the several " 'possible alternative permanent plans for a minor child. . . . The permanent plan preferred by the Legislature is adoption. [Citation.]' [Citation.] If the court finds the child is adoptable, it must terminate parental rights absent circumstances under which it would be detrimental to the child. [Citation.]" (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368, italics omitted.)

There are only limited circumstances that permit the court to find a "compelling reason for determining that termination [of parental rights] would be detrimental to the child." (§ 366.26, subd. (c)(1)(B).) Such circumstances include when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship" (§ 366.26, subd. (c)(1)(B)(i) [beneficial parental relationship

exception]) and when "[t]here would be substantial interference with a child's sibling relationship" (§ 366.26, subd. (c)(1)(B)(v) [sibling relationship exception]).

To prove the beneficial parental relationship exception applies, the parent must show there is a significant, positive emotional attachment between the parent and child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) And even if there is such a bond, the parent must prove that the parental relationship " 'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.' " (*In re S.B.* (2008) 164 Cal.App.4th 289, 297, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; accord, *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1345 (*Jasmine D.*).) "In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, at p. 575.) On the other hand, " '[w]hen the benefits from a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption.' " (*Jasmine D.*, at p. 1350; see *In re Autumn H.*, at p. 575.)

"Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*Jasmine D., supra*, 78 Cal.App.4th at p. 1350.) "Adoption is the Legislature's first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker." (*Id.* at p. 1348.)

The party claiming the exception has the burden of establishing the existence of any circumstances that constitute an exception to termination of parental rights. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.) The factual predicate of the exception must be supported by substantial evidence, but the juvenile court exercises its discretion in weighing that evidence and determining detriment. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.)

A.

Denial of Request for Bonding Study

Mother claims she twice requested that the juvenile court order a bonding study in preparation for the section 366.26 hearing; however, her request was first deferred and then denied on improper bases. We are not persuaded.

A bonding study, whether intersibling or parent-child, is not required prior to termination of parental rights. (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339.) The court has discretion to order a bonding study even late in the process. (*In re Richard C.*, at p. 1197.) Absent a showing of clear abuse, the exercise of the court's discretion will not be overturned. (*In re Lorenzo C.*, at p. 1341.)

A bonding study is an expert opinion on the relationship between the parent and child. The juvenile court is not required to appoint an expert when making a factual determination unless "it appears to the court . . . that expert evidence is . . . required." (Evid. Code, § 730.) When there is ample evidence in the record of the relationship between parent and child, the juvenile court can properly conclude that a bonding study is unnecessary.

As detailed in our summary of the relevant facts and procedure, the plethora of reports coupled with testimony from mother, the minor, the paternal grandmother, social workers, the minor's therapist, and other service providers provided a substantial amount

of evidence that described the nature and quality of the relationship between mother and the minor, the ups and more prevalent downs of their supervised visitation over the course of the dependency proceedings, explanations from the minor as to why she felt the way she did about mother, and observations from others regarding the interactions between mother and the minor. As such, the juvenile court already had ample evidence of the bond, or lack thereof, between mother and the minor.

Mother claims the court improperly based its initial denial of her request for a bonding study on its statement that "the timing is not sufficient," and that the court "pre-judged" the outcome of the section 366.26 hearing months before the hearing took place. Having failed to challenge the court's bases for its denial of her request at the relevant hearings, mother is precluded from raising the issue on appeal. (*In re Dakota H. supra*, 132 Cal.App.4th at pp. 221-222.)

In any event, even if the doctrine of forfeiture did not apply, we would reject mother's claim because it mischaracterizes the juvenile court's clear statement at the hearing on the initial section 388 petition that it was sharing its "thought process . . . at this point" but had not yet made up its mind on the issues to be determined at the section 366.26 hearing. Indeed, the court considered numerous reports, testimony from a number of witnesses including mother and the minor, and argument from counsel before rendering its decision to terminate mother's parental rights.

The juvenile court did not abuse its discretion by denying mother's request for a bonding study.

B.

Beneficial Parental Relationship Exception

Mother claims the court's denial of her request for a bonding study otherwise prevented her from proving the beneficial parental relationship exception, in particular, the second prong of the exception--that the minor "would benefit from continuing the

relationship" with mother. (§ 366.26, subd. (c)(1)(B)(i).) She argues that, without the bonding study, she had no opportunity to acquire the necessary evidence to prove the beneficial relationship exception and the court lacked "the necessary evidence to determine whether the second prong of the beneficial relationship exception applies." We disagree.

To prove the beneficial parental relationship exception applies, "the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits—the parent must show that he or she occupies a parental role in the life of the child. [Citation.]" (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) It is not enough simply to show "some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights." (*Jasmine D., supra*, 78 Cal.App.4th at p. 1349.) "[T]he parent must show that severing the natural parent-child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed. [Citations.]" (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466, italics omitted.)

As previously discussed at length in various parts of this opinion, the relationship between mother and the minor was at best tolerable and at worst tenuous and troubled. The minor's anger and resentment toward mother and the minor's steadfast and repeated requests not to live with mother or spend time with her were, according to the minor's therapist, her social worker, and the minor herself, deep-seated. The Department's reports were replete with examples of difficult visits between mother and the minor marked by the minor's demonstration of her disdain for mother and frequent arguments between the two, interspersed with the occasional incident-free interaction.

Mother's reliance on a bonding study as the only means by which to prove the beneficial parental relationship exception is neither persuasive nor supported by legal authority. The fact is mother offered no evidence, and there does not appear to be any in

the record, that she occupied a parental role in the minor's life or that the minor would suffer great harm if the relationship were severed. Indeed, it would have been nearly impossible to do so in light of the evidence already before the court, including evidence that the minor did not view mother as her parent; the minor's statements and testimony that she hated mother, wished mother would "jump off a cliff" but not die, she did not intend to visit mother after moving to Missouri with the paternal grandmother, and she only wanted additional visits with mother before the move because she did not want to "leave [mother] hanging." Moreover, when asked whether she understood that an adoption would sever her relationship with mother, the minor answered, "Yeah, and I like it."

While mother had every opportunity to present evidence of a beneficial parental relationship, she did not carry her burden. The juvenile court did not err in finding the beneficial parental relationship exception did not apply in this case.

DISPOSITION

The juvenile court's orders are affirmed.

/s/
HOCH, J.

We concur:

/s/
MURRAY, Acting P. J.

/s/
RENNER, J.